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SEP 20 1985

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Honorable R. J. Stembridge
Judge of Probate, Houston County
Houston County Courthouse
P. O. Box 6406
Dothan, AL 36302

Filing Tax -- Uniform Commercial
Code -- Partnerships -- Judges of
Probate

A financing statement perfecting a
security interest in a "fifty
percent (50%) partnership interest"
is subject to mortgage tax levied
under §40-22-2, Code of Alabama
1975.

Dear Judge Stembridge:

Reference is made to your letter addressed to Honorable
Charles A. Graddick, Attorney General, in which you request an
opinion from this office whether or not mortgage privilege tax is
due to be paid when a financing statement is filed in your office
indicating that the collateral is a fifty percent partnership
interest but which also shows that the debtor is one of the
partners in the partnership.

Section 40-22-2, in pertinent part, reads as follows:

No mortgage, deed of trust, contract of
conditional sale or other instrument of like
character which is given to secure the
payment of any debt. . . or any security
agreement or financing statement provided for
by the Uniform Commercial Code, except a
security agreement or financing statement
relating solely to security interests in
accounts, contract rights or general intangi-

bles, as such terms are defined in the Uniform Commercial Code, shall be received for record or for filing in the office of any probate judge of this state unless the following privilege or license taxes shall have been paid. . .

In your letter, you have asked if the "fifty percent partnership interest" shown as collateral in the financing statement should be considered as general intangibles thereby relieving said financing statement from payment of mortgage privilege tax.

It is my opinion that the collateral described in the financing statement here in question should not be considered as "general intangibles", but rather should be considered as personal property thereby subjecting the financing statement to mortgage privilege tax.

Section 10-8-40, Code of Alabama 1975, defines a partner's interest as follows:

A partner's interest in the partnership is his share of the profits and surplus, and the same is personal property.

The fact that the debtor in this financing statement is listed in Box 1 as being Dothan Forklifts, Inc. and that the collateral referred to in Box 5 is described in part as "fifty percent (50%) partnership interest including all underlying partnership assets in Dothan Venture Partnership, an Alabama general partnership" indicates that the security interest being perfected is a "partner's interest" and would therefore be governed by the statute quoted above. Consequently, that interest does constitute personal property and would therefore not except this financing statement from payment of mortgage privilege tax as levied under §40-22-2, supra. You must therefore collect the tax based upon the one-half partnership interest.

Sincerely,

CHARLES A. GRADDICK
Attorney General
By-


B. FRANK LOEB
Assistant Attorney General

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